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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,629	04/03/2007	Timothy Nicholas Moor	377.8429USU	7206

27623 7590 11/24/2008
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EXAMINER

GISSEL, GUNNAR J

ART UNIT	PAPER NUMBER
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2856

MAIL DATE	DELIVERY MODE
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11/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/588,629	Applicant(s) MOOR, TIMOTHY NICHOLAS	
	Examiner Gunnar J. Gissel	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 07 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) 1,4,5,10-12,17,22-26 and 28-60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,5-9,12-16 and 18-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/04/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1, 4, 5, 11, 22, 26, 30-33, 37-45, 47, 51, 54, 57 and 58 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected apparatus, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 07/07/2008.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2, 3, 6, 7, 8, 9, 12, 13, 16, 18, 19, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4,548,907 to William Seitz et al. (Seitz) in view of US Patent 6,300,638 to Howard Groger et al. (Groger).

Regarding Claims 2, 16, 18 and 19 Seitz discloses a fluid analyser system comprising a receptacle(s) for the collection of a fluid sample (Seitz, receptacle 50, sample 52) and an analysis apparatus containing a consistent light condition compartment (Seitz, compartment 54), means within the consistent light condition compartment for activating the molecules within the sample and means for detecting the radiation (Seitz, detection means 36) emitted by the sample, together with means for magnification of the detected signal (Seitz, magnification means 36 and 40), but does

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not explicitly disclose a temperature detection device. Seitz also discloses means for translating the magnified signal into the nature and quantity of the fluids present in the sample said means being referenced according to the known volume of the inflated receptacle (Seitz, column 6, lines 58-50) and the light condition of the fluid sample (Seitz, column 6, lines 60-61). Seitz does not explicitly disclose a temperature detection device, valves or translating the nature of the fluid sample through temperature, duration of radiation scan and distance of radiation scan.

Groger discloses a fluid analyzer containing temperature detection device into which the receptacle containing the fluid sample may be placed (Groger, claim 58). Groger also discloses that the receptacle is provided with a one-way valve (Groger, column 4, lines 60-65) and that the valve is in a valve holder which is shaped so that a fluid delivery tube, can be attached to the top of the receptacle (Groger, column 4, lines 60-65) and that the valve is in a valve holder which is shaped so that another receptacle or attachment can be attached to the bottom of the receptacle (Groger, column 4, lines 60-65). Groger also discloses translating the magnified signal into the nature and quantity of the fluids through the temperature of the fluid sample (Groger, column 6, lines 23-24) the duration of the radiation scan (Groger, column 9, lines 55-60) and/or the distance of the radiation scan (Groger, column 9, lines 60-67).

It would have been obvious to one of ordinary skill in the art, at the time of the invention to combine Seitz with teachings from Groger because teaches a field usable biological agent sensor (Groger, column 1, lines 25-30)

Regarding Claim 6, Seitz discloses that the analyser system is non-invasive (Seitz, figure 1). The analyzer pictured appears to just sit and does not comprise any needle, cutting tools, invasive mobile platforms or other methods of being invasive, so the analyzer must be non-invasive.

Regarding Claim 7, Seitz discloses that and transmits and/or receives test data remotely (Seitz, column 3, lines 58-61).

Regarding Claim 8, Seitz discloses a fluid analyzer including one or more of a visual display screen, a printer, a data transmitter/receiver, data storage, rechargeable/universal mains power supply, peripheral ports, keyboard, scroll bar, switches (Seitz, column 3, lines 58-61).

Regarding Claim 9, Seitz discloses a database of fluids and their known wavelengths (Seitz, tables 3 and 4).

Regarding Claim 12, Seitz discloses a fluid analyzer which is portable (Seitz, figure 1). Seitz discloses a machine that is laboratory sized and self contained. A self contained machine that is small enough to move into a laboratory is portable.

Regarding Claim 13, Seitz discloses that the walls of the receptacle have a high optical clarity and are flexible but not elastic (Seitz, receptacle 50). It is generally known in the art of spectroscopy to use high optical clarity receptacles, and plastic glass and quartz cuvettes are well known, all have some degree of flexibility and plastic with flexibility and lesser elasticity are also known.

Regarding Claim 20 Seitz discloses that the shape of the inflated receptacle is such that it is a firm fit within the consistent light condition environment (Seitz, figure 1).

Regarding Claim 21, Seitz discloses means whereby the peak intensities and peak intensity values are used/calculated and/or correlated with known/unknown peak intensities and/or peak intensity values (nm wavelength values) to indicate the nature of the fluids present in the sample and to determine the concentrations of the fluids in the sample (Seitz, column 1, lines 25-35).

3. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seitz modified by Groger further in view of US patent 3,854,050 to John Peterson et al. (Peterson).

Regarding Claims 14 and 15, Seitz as modified by Groger disclose a fluid analyzer, but do not explicitly teach a receptacle made from a fluorocarbon polymer or polypropylene.

Peterson teaches that the receptacle is formed from a fluorocarbon polymer (Peterson, column 7, lines 30-32) and that the receptacle is formed from a medical grade polypropylene (Peterson, lines 30-32).

It would have been obvious to one of ordinary skill in the art, at the time of the invention to combine the teachings of Peterson with the device of Seitz modified by Groger because Peterson teaches a high accuracy and precision apparatus of fluoroscopy (Peterson, column 1, lines 40-47).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5,064,283 concerns a fluoroscopy spectroscope. US

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5,061,076 concerns a time-resolved fluorometer. US 5,840,572 concerns a bioluminescent fluorometer. US 4,243,322 concerns a photoluminescent detector.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gunnar J. Gissel whose telephone number is (571)274-3411. The examiner can normally be reached on Mon-Fri, 7:30AM-5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571)272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GJG/

11/13/2008

/Hezron Williams/

Supervisory Patent Examiner, Art Unit 2856